MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **VICE CHAIR TRUDI SCHMIDT**, on March 23, 2005 at 3:45 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:
Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: HB 327, 3/21/2005
Executive Action: HB 327; HB 68

HEARING ON HB 327

Opening Statement by Sponsor:

REP. GEORGE GROESBECK (D), HD 74, opened the hearing on **HB 327,** Increase silicosis benefits.

REP. GROESBECK advised the bill increases silicosis benefits by $50 a month for each individual receiving benefits and amends some sections. He gave the Committee a handout giving background information on the silicosis program. There are only 44 people remaining under the benefits. Thirty seven are widows and 7 are claimants. Thirty-one of the 44 people remaining in the fund are over the age of 81. The fiscal impact, in future years, will be less as people expire and exit the fund.

EXHIBIT(phs64a01)

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Keith Messmer, Department of Labor and Industry, which administers the program, was available for questions.

Questions from Committee Members and Responses:

SEN. O'NEIL asked **Mr. Messmer** what the people were actually living on. **Mr. Messmer** said there were no income requirements for the program other than spouses of silicotics that died prior to March 14, 1974. The requirement is they can't have more than $6800 in income in any year. These individuals would be eligible for Social Security, Medicare or any other traditional benefits. This does not reduce the amount of benefits they receive under this program. **SEN. O'NEIL** questioned the meaning of gainful employment on line 17 of the bill. **Mr. Messmer** replied gainful employment only refers to actual victims of silicosis and puts an income requirement on how much they can make in a year. They have to be unable to work to a great extent. **SEN. O'NEIL** asked what source would they have income that doesn't exceed $300 a month. **Mr. Messmer** told them possibly a Wal-Mart greeter or clerk. Their income must be less than $300 a month.

SEN. ESP asked about the $6800 requirement. **Mr. Messmer** told him this only refers to the surviving spouses of the silicotics and prior to March 14, 1974. There are only four of those widows remaining who are receiving benefits. They are the only people

with income limitations other than the actual sufferers of the silicosis disease.

Closing by Sponsor:

REP. GROESBECK thanked the Committee for the hearing. He said he was a fourth generation Butte resident. He mentioned the mine shafts in Butte, the richest hill on earth, saying the bill helps people who have breathed silica dust. There are not many people left in this fund and, if the Committee could support the people through the last few years of their life, he would appreciate it.

CHAIRMAN CROMLEY returned to the Committee.

EXECUTIVE ACTION ON HB 327

{Tape: 1; Side: A; Approx. Time Counter: 0 - 18.8}

Motion/Vote: SEN. SCHMIDT moved that HB 327 BE CONCURRED IN. Motion carried unanimously. SEN. WILLIAMS, SEN. GRIMES and SEN. COBB voted aye by proxy.

SEN. WEINBERG will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 68

{Tape: 1; Side: A; Approx. Time Counter: 18.8 - 23.7}

Mr. Niss distributed a grey bill with amendments from the subcommittee who met on the bill. **SEN. MOSS** and the subcommittee had input from a variety of people. She told the Committee this is the best solution.

EXHIBIT(phs64a02)

Motion: SEN. MOSS moved that HB 68 BE CONCURRED IN.

Motion: SEN. MOSS moved that HB 68 BE AMENDED WITH HB006805.ADN.

Discussion: SEN. MOSS asked **Mr. Niss** to go through the amendments with the Committee. A copy of the unofficial BBS copy (gray bill), being referred to, is attached as well as a copy of the code the amendments refer to. These exhibits contain the information **Mr. Niss** explained to the Committee. The BBS copy shows the bill, with the amendments included.

EXHIBIT(phs64a03)
EXHIBIT(phs64a04)

{Tape: 1; Side: A; Approx. Time Counter: 23.7 - 30}{Tape: 1; Side: B; Approx. Time Counter: 0 - 3}

SEN. SCHMIDT had shown changes to **SEN. RYAN** who questioned the line saying, written authorization must include child's name and day or dates for which the authorization is applicable. He was concerned with day or dates. He asked if a parent could then give authorization saying the daycare can give their child one Tylenol from Sept. 1 to June 30 if the child has a fever. He asked if daycare would be able to do that without being in trouble with the law. **SEN. SHOCKLEY'S** interpretation was they could do that. **SEN. CROMLEY** thought it would be so. It could be fairly general, whether it be the dates of the term of the school year, the dosage instructions, which would be the recommended dose on the bottle of aspirin, and the signature. **SEN. MOSS** replied that **Mr. Niss** and she had discussed this and it seemed to be the consensus.

{Tape: 1; Side: B; Approx. Time Counter: 3 - 4.1}

SEN. SCHMIDT said it would be good to have on the record that this is the consensus.

Mr. Niss thought aspirin fell within the definition of any medicine. The next question is whether the written authorization language can be interpreted to allow a range of dates and he thought it could. It says day or dates for which the authorization is applicable. As long as the range is included within the dates for which the authorization is applicable, there shouldn't be a problem with that. When discussing this with **Roy Kemp**, earlier, this is the way the department is moving in their rules.

Roy Kemp, Licensing Bureau Chief, Day Care Facilities, didn't have a problem with the language. The department is addressing these matters in the proposed rule, which has not yet gone through the full process. When you say date or dates, what comes to mind is a child who may have an allergy to a bee sting. They have an epi-pen they would like used during this time but, during the winter months, it may not necessarily be there at all. That would encompass a range of dates. He thought the language would tend them to believe it was a date specific, or a range of dates, that would be acceptable for the authorization.

{Tape: 1; Side: B; Approx. Time Counter: 4.1 - 10.3}

SEN. SCHMIDT wanted the above to be a part of the record. She also wanted, as part of the record, that the parent would be able to give a blanket authorization for giving the aspirin and Tylenol to a child for a fever or to a child that was teething. They would be able to say, if any of this happens during the year, I am giving authorization to give my child one aspirin or liquid Tylenol during this period of time, between Sept. 1 to May 1, or whatever.

Mr. Kemp said he believed **SEN. SCHMIDT** had given a different light on that particular matter. He wasn't sure it is good practice to say, here's a bottle of aspirin. If my child asks for one for these conditions, go ahead and give him one, leaving it an open end. This requires someone to make a decision to what the condition is the child has vs. a child being treated for medication with a specific purpose under a doctor's orders where the instructions are quite clear. He didn't believe they intend to allow a care provider to make decisions for administering an over-the-counter, or a prescription medication, in a term that broad. They would indicate the parent would have to be notified of whatever that child's condition is. That parent, at that time, might say they want this done. Then you can look at their standing order. They are talking about epi-pens, as opposed to over-the-counter medications. He wasn't comfortable with saying, here's the medication, and here are the conditions. If anything happens during the next nine months, go ahead and give them one. He believes they will address that issue in the rules. That specific issue won't need to be introduced into the statute. This is something the rules can clarify.

SEN. SCHMIDT replied the reason she wanted it in the record was because she was hoping the rule would be clarified. She didn't think it needed to be put in the legislation, but wanted the rule clarified for people in daycare whether they could give an aspirin or Tylenol for teething or a headache.

Mr. Kemp told **SEN. SCHMIDT** it will be addressed in administrative rule.

{Tape: 1; Side: B; Approx. Time Counter: 10.3 - 15.8}

Regarding prosecution, **Mr. Niss** said, if the terms of the statute are complied with, there will be no prosecution. The new definition of bodily injury is in 4(a). It is included in the copies of the MCA sections, which are appended to the gray bill. Purposely or knowingly has been substituted for the word, unlawfully. Ten years has been changed to six months and the fine has been reduced.

SEN. CROMLEY said the offense is now purposely or knowingly administering without authorization resulting in bodily injury. The penalty is a maximum of six months and maximum $500 fine.

SEN. O'NEIL questioned what happens if someone purposely or knowingly administers medicine to a child without authorization and they luck out and it doesn't hurt the child, are they free of doing anything wrong. **SEN. CROMLEY** answered, yes.

SEN. CROMLEY pointed out the penalty for a serious offense of purposely or knowingly administering medicine, resulting in serious bodily injury, would be 20 years or $50,000 maximum. Both offenses are causing bodily injury by administering without authorization.

SEN. MOSS said these two suggestions came from **SEN. SHOCKLEY.** He suggested a parallel for similar crimes and imprisonment. She thought that answered the concerns **SEN. GRIMES** had in regard to fines and punishment.

SEN. CROMLEY wanted a distinction between bodily injury and serious bodily injury. **Mr. Niss** said that is in the statutes.

SEN. CROMLEY complimented the work of the subcommittee, saying they took the best parts from prior discussions and put them into the amendments.

SEN. MOSS shared the gray bill with **REP. ANDERSON**, the bill's sponsor. She, in turn, shared it with the parents who testified at the hearing. The parents felt there should be a more severe penalty. **REP. ANDERSON** explained the Committee's thinking on the amendments and they are comfortable with it.

{Tape: 1; Side: B; Approx. Time Counter: 15.8 - 30.5}

Mr. Kemp had reviewed the amendments. He realized how difficult these decisions were for the Committee and the work put into it. He thought this would enhance their ability to write a rule with the language put in. The definitions are already in the statute and relevant, which takes the subjectivity out. He had no objections.

SEN. SCHMIDT thanked **SEN. SHOCKLEY** for taking time to help work this out. His input was valuable and she wanted this on the record.

SEN. O'NEIL was not comfortable that a person could give medicine to his grandkids without being authorized but, as long as it

didn't hurt them, it was all right. He wanted them to have authorization before they could give medicine to his grandkids.

Motion/Vote: SEN. MOSS moved that AMENDMENT HB006805.adn BE ADOPTED. Motion carried unanimously by voice vote.

Motion: SEN. ESP moved that HB 68 BE CONCURRED IN AS AMENDED.

Discussion: SEN. ESP, in addressing **SEN. O'NEIL's** concerns, asked **Mr. Kemp** if somebody gives a child medicine without written authorization, then the parent complains to the department, under the proposed rule, will the department have authority to apprehend the person. **Mr. Kemp** replied, yes, but to remember that the things the department does are administrative in nature, not criminal or civil. They could reduce their license and put training in place. They would use all the tools they have to bring the facility in compliance. The only circumstance under which a person could administer medication, without a parent or guardian's permission, would be an emergency situation being ordered by a practitioner.

SEN. CROMLEY, in addressing **SEN. O'NEIL'S** concerns, said we have prohibition against giving medicine without authorization. If giving the medicine creates bodily injury, it is a misdemeanor. If it creates serious bodily injury it's a felony. When it does not create injury, it is against the statute and will be against some sort of rule. The department will then have action or a warning activity. **Mr. Kemp** answered that the facility can then be sanctioned. It will be in the rule that you may not do these things without having permission of the parent. If it caused no bodily injury, there is still an event that took place outside of the sans of factus established by rule.

Vote: Motion carried unanimously. SEN. WILLIAMS voted aye by proxy.

SEN. STAPLETON will carry the bill on the Senate floor.

SEN. MOSS, as Chair for the subcommittee, thanked all the members for their input, as well as **Mr. Niss** for his patience and for developing the gray bill. She also thanked **SEN. SHOCKLEY** for his input.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 10}

ADJOURNMENT

Adjournment: 4:40 P.M.

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SEN. BRENT R. CROMLEY, Chairman

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RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT(phs64aad0.PDF)